Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 89–80)

GUIDANCE FOR INTERPRETATION OF HARMONIZED SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice giving guidance on use of certain documents to interpret Harmonized Tariff Schedule of the United States.

SUMMARY: Since the entry into force of the Harmonized Tariff Schedule, much interest has been generated in the international trade community as to the weight accorded by Customs to various types of documents generated by the Customs Cooperation Council. This document sets forth Customs views regarding these documents.

FOR FURTHER INFORMATION CONTACT: Paul Giguere, Director, International Nomenclature Staff, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8530).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 1204 of Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988, the Harmonized Tariff Schedule of the United State (HTS) was implemented effective as to merchandise entered or withdrawn for consumption on or after January 1, 1989.

Since the implementation of the HTS, Customs has been urged to take into consideration a host of documents as background documentation in the classification of goods. These have included, not only the Explanatory Notes to the Harmonized System (HS), but such documents as reports of the Nomenclature Committee (the committee that administered the Customs Cooperation Council Nomenclature), letters from the Secretariat of the Customs Cooperation Council (CCC) and rulings and regulations from other Customs administrations. All of these matters are urged on Customs as an indication of the intent of the Harmonized System Committee (HSC) in drafting the system, or, sometimes, on the grounds that Customs has an obligation to interpret the HTS in uniformity with

the interpretation of the CCC or that of other Contracting Parties to the Convention on the Commodity Description and Coding System (the Convention).

This notice explains Customs position on the various documentation that is available and gives an overall assessment of the weight that should be accorded to the various documents.

Uniformity in the interpretation of the international system, the HS, is not a function of Customs. Customs is charged with the administration and interpretation of the HTS, the tariff enacted by Congress. The function of maintaining the uniform application of the HS resides with the HSC per Article 7 of the Convention. It is fundamental that the United States did not give up sovereignty when it acceded to the Convention. There is, as such, no obligation on Contracting Parties for uniform application of the HS. There is, however, an obligation on Contracting Parties to "not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System." Consequently, Customs takes background documentation into consideration so that classification rulings do not so modify the system.

THE COMMITTEES

An understanding of the documentation issued by the CCC requires some background into the various committees that dealt with the HS. The HS was drafted by a committee known as the HSC. Unfortunately this is the same name as the committee formed under the Convention, and this has produced some confusion. Four committees have dealt with the HS: (1) the HSC which existed from 1973 to 1983; (2) the Interim HSC; (3) the HSC formed under the Convention; and (4) the Nomenclature Committee.

The drafting Harmonized System Committee: The HSC which was charged with drafting the HS met in 31 sessions from June 1973 to June 1983. Its reports are designated: Summary Record of the xx Session of the Harmonized System Committee and its Working Party.

The Interim Harmonized System Committee (IHSC): This committee met in 9 sessions, jointly with the Nomenclature Committee, from 1983 till the Convention went into force on January 1, 1988. It drafted the HS Explanatory Notes and reviewed the Compendium of Classification Opinions. Although it had no particular legal standing it did make proposals for amending the HS.

The Harmonized System Committee: The committee formed under the Convention. It is the committee currently charged with the administration of the Convention. It meets twice a year and held its first session in April 1988.

The Nomenclature Committee: The committee formed to administer the Customs Cooperation Council Nomenclature (CCCN) (first known as the Brussels Tariff Nomenclature), the nomenclature which is replaced by the HS. Because the Nomenclature Committee

had agreed to amend the CCN to conform to the HS, it reviewed the work of the HSC to see if it found it acceptable for purposes of the CCN.

THE DOCUMENTS

Explanatory Notes:

The status of the Explanatory Notes (ENs) to the HS is to specifically addressed in the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988. It is there stated:

> The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.
>
> The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

This is a clear statement of the intent of Congress in adopting the HS as a basis for the U.S. Tariff. The status outlined by the Joint Committee of Congress applies only to the ENs and "similar publications of the Council." In that connection Customs would point out that the only similar publication of the Council is the Compendium of Classification Opinions.

Among the international conventions administered by the CCC, the HS is a replacement for the former CCCN. There were ENs to the CCCN and they are sometimes cited in requests for rulings. The CCCN ENs have no value in interpreting the HS. They are the ENs to a different system; one which is now virtually nonexistent since most nations have adopted the HS.

It should also be noted that the ENs are a dynamic instrument reflecting the intent of the Contracting Parties on the application and interpretation of the HS. They will be amended from time to time and may thus reflect a change in interpretation. Customs believes they should always be consulted.

Classification Opinions:

The CCC publishes a Compendium of Classification Opinions. These opinions represent decisions by the HSC on the classification of various products that were presented to the HSC for consideration. When a classification question is presented to the HSC, the Committee will frequently draft an opinion to be published in the Compendium. However, that is not always the case. Sometimes the

decision of the HSC is converted into an amendment to the ENs, and sometimes it is merely reported in the report of the session of the HSC when the decision was made. The decision is included in the Compendium when it is thought to be particularly instructive.

When a decision of the HSC is published in the Compendium it should receive the same weight as ENs. They constitute the official interpretation of the HS in consideration of a particular issue placed before the HSC.

There was also a Compendium of Classification Opinions under the CCCN. The Interim HSC reviewed that Compendium and adopted into the HS Compendium a number of the CCCN opinions. Approximately 20 percent of the CCCN opinions were carried over to the HS. The remainder were discarded, some because they were outdated, some because their substance had been incorporated into the HS ENs and some because they were thought to be erroneous under the HS. Opinions reported in the CCCN Compendium have no validity under the HS for the same reasons the CCCN ENs are not valid under the HS.

HSC Reports prior to July 1983:

The HSC prior to 1983 was tasked with drafting the HS. This required numerous decisions and these are reported in the Summary Records of the HSC sessions. The Summary Records of HSC sessions are a resource in ascertaining the intent of the Committee in the drafting of any particular text. Because the sessions were long and rather involved, the deliberations of the Committee are reported only in summary form. The Summary Records do contain reports on a number of decisions of the HSC. When such decisions are clearly reported they constitute history for the text concerned. The Summary Records are available to the public through the Department of Commerce National Technical Information Service. While these documents do not carry the weight of the ENs or the Compendium of Classification Opinions, they are frequently guides to the intention of the HSC.

Interim HSC Reports:

The IHSC drafted the ENs and reviewed the CCCN Compendium of Classification Opinions. The reports of this Committee have the same relationship to those documents as do the Summary Records of the HSC to the legal texts of the HS. Since the ENs have no legal standing, these reports are not considered history for the HS. Customs considers them to be instructive in some instances.

The IHSC also considered a number of amendments to the HS. Because the IHSC had no defined standing, all of the IHSC decisions on amendments were referred to the HSC when the Convention came into force. Therefore, for some of the proposed amendments to the HS, background information can be found in the reports of the IHSC.

Report of the HSC after 1/1/88:

The Convention went into force on January 1, 1988, and sessions thereafter are reported in Reports of the Harmonized System Committee. The first session was held in April 1988. Decisions of this committee are advice and guides to the interpretation of the HS. None of these decisions are binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions.

In rendering its decisions, the HSC also usually decides whether the decision merits an amendment to the ENs, the issuance of a classification opinion to be added to the Compendium, or to merely report the decision in the report of the session. If the decision results in amendment of the EN or goes into the Compendium, it, then, should receive considerable weight. As Congress made clear, however, the decision should not be treated as dispositive.

Decisions of the HSC that are merely given in the report should be given little weight.

Decisions to amend the HS itself need to go through the amendment procedure provided in the Convention. They require domestic legislation to go into effect in the United States.

Nomenclature Committee Reports:

Customs is frequently asked to consider reports of the Nomenclature Committee. They carry virtually no weight. Decisions of the Nomenclature Committee cannot imply an intent on the HSC. They are two separate committees, differently constituted, and set up for different purposes.

Normally, the HSC received reports from the Nomenclature Committee without comment. When the HSC adopted an opinion or decision of the Nomenclature Committee it was specifically noted in the Summary Record.

When the HS was drafted it was decided to prepare an entirely new convention to implement it. It was the intention of the HSC to start anew; to have a new convention unencumbered by the many years of action by the Nomenclature Committee. Although the HS is primarily based on the CCCN, it is a new and different nomenclature with a convention that provides for substantial difference in its voting membership. Customs finds that there is no reason to believe that questions decided by the Nomenclature Committee would produce the same result in the HSC.

Working documents:

Customs calls "working documents" those documents issued by the Nomenclature and Classification Directorate of the CCC. There are the documents that form the basis for discussions in HSC sessions. They carry virtually no weight in interpreting the system. Working documents usually consist of commentary by delegations on questions before the Committee, commentary by the Secretariat on various drafts and proposals, commentary by the Secretariat on

the comments made by delegations, and other material designed to frame the question the HSC is to discuss and to stimulate the discussion. Because it is preliminary material, none of it reflects the intent of the HSC.

The working documents are sometimes interesting because they contain more detailed descriptions of the goods under consideration and they sometimes contain the rationale for certain positions.

Rulings of other countries:

The General Rules for the Interpretation of the Harmonized System, the Section and Chapter Notes and the first six digits of the Harmonized System constitute the international nomenclature. Therefore, in principle, all Contracting Parties to the Convention should give the same classification to identical merchandise through the six-digit subheading level. In this regard, classification rulings from other Customs administrations are sometimes submitted to Customs with a ruling request as evidence of how similar merchandise has been classified under the HS by that country.

Customs is not bound to abide by another country's rulings. The foreign ruling may have been subject to political realities or domestic regulations which are different from our own. The merchandise at issue in our ruling may not be identical to that in the foreign ruling. In either case, the foreign ruling is unlikely to describe fully the context in which it was issued. Therefore, at best, the foreign ruling is merely instructive of how others may classify like goods.

Position papers:

Prior to each session of the HSC, Customs, the International Trade Commission and the Bureau of the Census prepare position papers to reflect the position to be taken by the U.S. delegation at the session. These documents in no way reflect the position of Customs in the interpretation of the HTS. Position papers are guides for the delegation in the context of the HSC session; they are essentially negotiating positions. They are mentioned here because some position papers have received some circulation and have been cited in support of a classification; they have no value whatever for such purposes.

SUMMARY

Customs is charged with the interpretation of the HTS and not, as such, of the HS.

Customs concern in looking at documents is to find the scope of headings and subheadings of the HTS.

As indicated by Congress, Customs will give considerable weight to Explanatory Notes and the Compendium of Classification Opinions because they are the official interpretation of the HS, but they shall not be treated as dispositive.

When it is necessary to determine the intent of the HSC, Customs will look to the Reports and Summary Records of the HSC.

Other documentation may be consulted for information purposes only.

Approved: August 16, 1989.

D. LYNN GORDON,
Assistant Commissioner,
Commercial Operations.

[Published in the Federal Register, August 23, 1989 (54 FR 35127)]

(T.D. 89–81)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback authorizations issued March 3, 1988, to April 26, 1989, inclusive, pursuant to Subpart C, Part 191, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was issued.

(DRA–1–09)
Dated: August 21, 1989.
File: 221522

JOHN DURANT,
Director,
Commercial Rulings Division.

(A) Company: Abbott Laboratories
Articles: Injectables
Merchandise: Dopamine hydrochloride
Factory: North Chicago, IL
Statement signed: December 12, 1986
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, February 13, 1989

(B) Company: Abbott Laboratories
Articles: Reagents
Merchandise: Lipoprotein lipase, disphorase (DI) powder
Factories: North Chicago, IL (2)
Statement signed: November 7, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, February 13, 1989

(C) Company: Abbott Laboratories
Articles: Bulk antibiotic chemicals: erythromycin ethyl succinate, USP; erythromycin ethyl succinate, USP, citrate washed; beta-carbethoxypropionyl chloride
Merchandise: Succinic anhydride
Factories: North Chicago, IL; Ponce, PR
Statement signed: November 7, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, March 6, 1989

(D) Company: BASF–Corp.
Articles: 1,6–hexanediol and pentanediol (Diol mixture)
Merchandise: Crude hexanediol
Factory: Freeport, TX
Statement signed: January 15, 1988
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: New York, February 21, 1989

(E) Company: Bessonet Bee Co., Inc.
Articles: Finished honey
Merchandise: Raw honey
Factory: Donaldsonville, LA
Statement signed: May 9, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: New Orleans, April 20, 1989

(F) Company: Buffalo Color Corp.
Articles: N,N–Dimethylaniline; indigo paste; indigo powder
Merchandise: Aniline oil
Factory: Buffalo, NY
Statement signed: September 27, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, March 6, 1989

(G) Company: Ceres Corp.
Articles: Cubic zirconia and zirconia ceramics
Merchandise: Yttrium and zirconium oxides
Factories: Waltham & North Billerica, MA
Statement signed: December 15, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Boston, March 21, 1989

(H) Company: Chemetals Inc.
Articles: Nitrided manganese metal and solumang
Merchandise: Electrolytic manganese metal; aluminum powder
Factories: Baltimore, MD; New Johnsonville, TN
Statement signed: April 22, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, April 26, 1989
Revokes: T.D. 80–245–H (Foote Mineral Co.)

(I) Company: Citrus World, Inc.
Articles: Pasteurized orange juice
Merchandise: Fresh orange juice
Factory: Lake Wales, FL
Statement signed: January 3, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Miami, April 18, 1989

(J) Company: ConAgra, Inc., Nutribasics Co., Mid America Milling Co.
Articles: Premixes for animal feeds (concentrates)
Merchandise: Riboflavin; ethoxyquin (liquid), menadione sodium bisulfite complex (MSBC); menadione dimethyl-pyrimidinol bisulfite (MPB)
Factories: Highland, IL; Willmar, MN; Chattanooga, TN; St. Joseph, MO; Omaha, NE
Statement signed: March 16, 1987
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, March 3, 1988

(K) Company: Continental Flavors & Fragrances, Inc.
Articles: Food and beverage flavor bases
Merchandise: Concentrated orange juice for manufacturing
Factories: Brea, CA; Bridgeport, NJ; Wapato, WA
Statement signed: December 16, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Los Angeles, February 21, 1989

(L) Company: Daicolor-Pope, Inc.
Articles: All wet and dry color pigments
Merchandise: Dye intermediates
Factory: Paterson, NJ
Statement signed: July 25, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, February 13, 1989

(M) Company: Esselte Pendaflex Corp.
Articles: Price marking systems (finished labels wound onto plastic cores)
Merchandise: Laminated paper; polypropylene and polystyrene plastic cores (retainers)
Factory: Randolph, MA

Statement signed: May 16, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Boston, February 13, 1989

(N) Company: The Goodyear Tire & Rubber Co.
Articles: Plioflex 1500c, 1502, 1510, 1712c, 1027, 1028
Merchandise: Styrene (vinylbenzene)
Factories: Houston, TX; Calhoun, GA; Akron, OH
Statement signed: January 15, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, February 13, 1989

(O) Company: Interloom International, Inc.
Articles: Tufted polypropylene carpet; tufted wool carpet; tufted wool/polypropylene carpet
Merchandise: Polypropylene/olefin yarn; wool yarn; wool/polypropylene yarn
Factory: Chatsworth, GA
Statement signed: May 5, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Miami, February 13, 1989

(P) Company: L.A. Dreyfus Co.
Articles: Chewing gum base
Merchandise: Polyvinyl acetate; butyl rubber; polyisobutylene
Factory: Edison, NJ
Statement signed: July 13, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, March 28, 1989
Revokes: T.D. 89–32–P

(Q) Company: National Die Casting Corp.
Articles: Window operators; window accessories; window hardware
Merchandise: Zinc alloy ingots
Factory: Bayamon, PR
Statement signed: May 18, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Miami, February 24, 1989
Revokes: T.D. 77–135–D (Caribbean Die Casting Corp.)

(R) Company: Norplex Oak
Articles: Bonding sheets and pressed laminates
Merchandise: Copper foils
Factories: La Crosse, WI; Franklin, IN; Postville, IA; Chandler, AZ; Franklin, NH (2); Hoosick Falls, NY (3)
Statement signed: August 2, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, March 20, 1989

(S) Company: Orval Kent Food Company, Inc.
Articles: Refrigerated prepared food products

Merchandise: Various processed and unprocessed foods, including vegetables, fruits, oil, fish, and macaroni
Factories: Wheeling, IL; Philadelphia, PA; East Rutherford, NJ
Statement signed: December 12, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, February 15, 1989

(T) Company: Oxide & Chemical Corp.
Articles: Battery oxide; litharge
Merchandise: Corroding grade lead
Factories: Brazil, IN; Lancaster, OH; Kansas City, KS; Covington, GA
Statement signed: July 1, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, March 20, 1989

(U) Company: Queen Carpet Corp.
Articles: Tufted carpet; carpet yarn
Merchandise: Nylon staple fiber; nylon filament yarn
Factories: Dalton & Tifton, GA
Statement signed: June 21, 1988
Basis of claim: Appearing in
Rate forwarded to RCs of Customs: Miami & New Orleans, March 6, 1989
Revokes: T.D. 84–169–S

(V) Company: Reading Alloys, Inc
Articles: Aluminum-vanadium master alloy
Merchandise: Fused flake vanadium pentoxide
Factory: Robesonia, PA
Statement signed: November 7, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Boston (Baltimore Liquidation), February 15, 1889

(W) Company: Sandoz Chemicals Corp.
Articles: Dyestuffs
Merchandise: Dye intermediates, per T.D. 72–108(3)
Factories: Martin, SC; Charlotte, NC
Statement signed: April 3, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, April 24, 1989
Revokes: T.D. 87–103–V and T.D. 88–42–Y

(X) Company: SpecialtyChem Products Corp.
Articles: para-dimethoxybenzene; para-hydroxyanisole
Merchandise: Hydroquinone
Factory: Marinette, WI
Statement signed: November 14, 1988

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: Boston, February 15, 1989

(Y) Company: Sterling Chemicals, Inc.
Articles: Styrene
Merchandise: Benzene; ethylene
Factory: Texas City, TX
Statement signed: November 18, 1988
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RCs of Customs: New York & Houston, February 21, 1989

(Z) Company: Syntex Laboratories, Inc.
Articles: Oral contraceptives
Merchandise: Norethindrone
Factory: Palo Alto, CA
Statement signed: April 12, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Los Angeles (San Francisco Liquidation), April 21, 1989

APPROVAL UNDER T.D. 84–49

(1) Company: U.S. Oil and Refining Co.
Articles: Petroleum products
Merchandise: Crude petroleum and derivatives
Factory: Tacoma, WA
Statement signed: December 12, 1988
Basis of claim: As provided in T.D. 84–49
Rate forwarded to RC of Customs: Houston, March 28, 1989

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 21, 1989.

The following are documents of the United States Customs Service, Office of Commercial Operations, determined to be of sufficient interest to the public and Customs field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(O.C.O.D. 89–1)

This document sets forth guidelines on the proper interpretation and application of General Rule of Interpretation 1 (GRI 1), of the Harmonized System when classifying merchandise.

CLASSIFICATION OF GOODS UNDER GENERAL RULE OF INTERPRETATION 1 OF THE HARMONIZED SYSTEM

One of the questions that has frequently arisen since the implementation of the HTS occurs where merchandise consisting of two or more components is presented. In these cases the issue is whether the merchandise may be classified in accordance with the principles of General Rule of Interpretation 1 (GRI 1), or should be classified on the basis of GRI 3, either as composite goods or goods put up in sets for retail sale. The following information is therefore presented in order to provide clarification concerning the proper application of Rule 1 in the classification of goods.

The Harmonized System (HS) is a detailed goods nomenclature in which all goods are classified. In this context the word "goods" is used in its broadest sense to include all merchandise; the word should be thought of as opposed to services. The systematic detail of the HS is such that virtually all goods are classified by application of GRI 1; that is, according to the terms of the headings and any relative Section or Chapter Notes.

Since goods are classified primarily according to the terms of the headings and relative notes, we should bear in mind how the headings are grouped. The chapters that group the headings can be divided into those that are material-related (for example Chapter 44, Wood and articles of wood; wood charcoal or Chapter 74, Copper and articles thereof), chapters that are function-related (for example, Chapter 88, Aircraft, spacecraft, and parts thereof), and chapters that combine material and function (for example, Chapter 64, Footwear, gaiters and the like; parts of such articles).

Since the primary distinction in the chapters of the HS is between material and function, that is the first distinction to be made in classifying goods. By function we are referring to the purpose for which the goods were designed or exist; this is most generally determined from their intended use. With this in mind, classification under GRI 1 proceeds as follows:

(1) If the nature or make-up of the goods reveals a function (a specific intended use), then the proper function-related chapter must be examined. First, it must be determined that the function of the article is indeed included in the chapter. Next, the section and chapter notes must be consulted to ensure that classification of the article is not ruled out by a legal note. If classification is excluded by a note, the note will usually give a reference to where the article is to be classified; most frequently to a material-related chapter.

Consideration must also be given to the possibility that more than one function-related chapter may apply. For example, domestic sewing machines with a built-in electric motor are function-related articles provided for in Chapters 84 and 85 as follows:

> Heading 8452—Sewing machines, other than book-sewing machines of heading No. 8440.
>
> Heading 8509—Electro-mechanical domestic appliances, with self-contained electric motor.

On consulting the Chapter Notes, we find that Note 3 to Chapter 85 excludes sewing machines from heading 8509 and provides a reference to heading 8452 where the article is to be classified. Classification is thus based on GRI 1, i.e., the terms of the Headings and relative Chapter Notes.

(2) If the nature or make-up of the article to be classified does not reveal a function, or if there was failure of eligibility in a function-related chapter, then the eligible material-related chapter must be identified. An illustration of the latter situation is as follows: The product, spools of plastic designed to hold yarn for use in commercial knitting machines, is excluded from Section XVI (Machinery, mechanical appliances and electrical equipment) by reason of Note 1(c). Accordingly, although function related, the product is classified according to the constituent material in Chapter 39 (plastics and articles thereof). Again, classification is based on GRI 1.

In the material-related chapter, the section and chapter notes must be checked to determine if classification in the chapter is ruled out. If so, the notes will usually make an appropriate reference to the proper classification. Example, Chapter 39 covering articles of plastic contains numerous references to articles excluded from coverage in that chapter with citations to the proper headings.

Any processing that the article has undergone must be considered. There are two purposes for this. The first is to determine if the processing is of an extent and kind allowable in the chapter. If the processing is not permitted, a reference to the proper material related chapter will usually be made. For example, several of the chapters in Section IV contain legal notes which exclude food products which have been prepared or preserved by the processes specified in Sections I and II. If the processing is permitted, one should be able to determine where in the chapter the article fits.

In most cases, as stated previously, GRI 1 should provide the classification of the article. If after applying the analysis described above more than one chapter appears to be eligible, recourse must be made to GRIs 2 and 3.

(O.C.O.D. 89–2)

The following document briefly describes various "fact sheets" issued by the Office of Trade Operations which contain procedural instructions on the proper interpretation of various provisions of the Omnibus Trade and Competitiveness Act of 1988.

Date: June 28, 1989
File: ENT–1–CO:T:E:E
RLB

TO : All Personnel
Office of Commercial Operations

FROM : Director
Office of Trade Operations.

SUBJECT: Omnibus Trade and Competitiveness Act of 1988
List of Fact Sheets Issued to Date.

The Office of Trade Operations has issued a number of fact sheets informing Customs personnel and other interested parties of some of the provisions in the Trade Act of 1988. Many of the fact sheets contained specific instructions as to the procedures to be followed in implementing the diverse provisions of the Trade Act. Following is a list of all fact sheets which have been issued to date:

A. Fact Sheet #1 (Telex No. 12430): Notice that the Trade Act has been signed and that information will be sent via sequentially numbered fact sheets.

B. Fact sheet #2 (Telex No. 12133): Prohibitions regarding the importation of coffee from non-ICO members, (section 1123).

C. Fact sheet #3 (Telex No. 12429): Replacing obsolete TSUS numbers with current TSUS numbers, (section 1804(c)).

D. Fact sheet #4 (Telex No. 12614): List of Schedule 9 (appendix to TSUS) item numbers whose expiration dates have been extended, (section1804(a)(b)).

E. Fact sheet #5 (Telex No. 12615): Reliquidation of transistors classified under TSUS 687.60, (section 1845).

F. Fact sheet #6 (Telex No. 12945): Authorization for duty free entry of articles designated for use in the telescope for W.M. Keck Observatory, Hawaii, (section 1841).

G. Fact sheet #7 (Telex No. 13474): Repealed TSUS item numbers, (section 1782(b)).

H. Fact sheet #8 (Telex No. 12613): Notice that new Schedule 9 (appendix to TSUS) item numbers will be forwarded by memo.

I. Fact sheet #9 (Mailed to each district via courier): List of all new appendix to TSUS, Schedule 9 item numbers. A separate issuance re textiles from Guam (section 1736), was circulated as QBT–88–87.

(Telex No. 16336—Additional Schedule 9 item numbers)

J. Fact sheet #10 (Telex No. 12612): Permanent amendments to the tariff schedules, (sections 1701 through 1724).

Telex No. 13127: Supplemental instructions to fact sheet #10.

Telex No. 013578: Additional supplemental instructions to fact sheet #10.

K. Fact sheet #11 (Telex No. 13502): Re section 1831—Listing instructions and those Schedule 9 (appendix to TSUS) item numbers eligible for retroactive liquidation/reliquidation.

L. Fact sheet #12 (Telex No. 12791): List of Schedule 9 (appendix to TSUS) item numbers that have been extended and notice to field to begin liquidation of those entries not yet liquidated.

M. Fact sheet #13: Issued, but rescinded because of a conflict with a later fact sheet regarding extended suspension provisions under the Revenue Act of 1988.

N. Fact sheet #14 (Telex No. 14296): Re section 1907(a) that amends 19 U.S.C. 1304(h) by increasing penalties for intentional alteration or removal of country of origin markings.

O. Fact sheet #15 (Telex No. 13330): Re section 1907(b)(c)—Notice of amendments made to marking provisions.

P. Fact sheet #16 (Telex No. 13894): Prohibition that anti-dumping and countervailing duties are eligible for refund under drawback provisions, (section 1334).

Q. Fact sheet #17 (Telex No. 13893): Re section 1335—Clarification that governmental importations are subject to anti-dumping and countervailing duties in certain instances.

R. Fact sheet #18 (Telex No. 013980): Amendment to the Trading with the Enemy Act and the International Economic Emergency Powers Act.

S. Fact sheet #19 (Telex No. 014277): Re section 1717—Notice that the classification of extracorporeal shock wave lithotripters has been changed from TSUS 709.15 to TSUS 709.17.

T. Fact sheet #20 (Telex No. 14392): Amendment to fact sheet #16 and #17—Clarifying effective date.

U. Fact sheet #21 (Telex No. 14455): Concerning duty free entry and duty free reliquidation of entries for extracorporeal shock wave lithotripters, (section 1844).

V. Fact sheet #22 (Telex No. 15255): Concerning section 305 TA and commencement of forfeiture proceedings against obscene materials.

W. Fact sheet #23 (Telex No. 15311): Clarifying effective date for section 1335.

X. Fact sheet #24 (Telex No. 15351): Ascertaining tare on crude oil and petroleum products, (section 1902).

Y. Fact sheet #25 (Telex No. 15352): Re Technical and Misc. Revenue Act of 1988: Amendments to TSUS 735.24 and 909.35.

Z. Fact sheet #26 (Telex No. 15901): Re Technical and Misc. Revenue Act of 1988: List of extended schedule 9 tariff provisions.

AA. Fact sheet #27 (Telex No. 15917): Re Technical and Misc. Revenue Act of 1988: Correction to fact sheet #27.

BB. Fact sheet #28 (Telex No. 01327): Clarifies effective date for section 1334 of the Trade Act.

CC. Fact sheet #29 (Telex No. 01328): Re imposition of excise tax on imports of pipe tobacco.

DD. Fact sheet #30: Not yet issued.

EE. Fact sheet #31 (Telex No. 001834): Re section 1335 of the Trade Act and headquarter's position regarding MOU's between DOD and foreign countries.

FF. Fact sheet #32 (Telex No. 01850): Re section 9004(b)(2) of the Revenue Act of 1988—Relating to caffeine—instructions to proceed with liquidations in certain circumstances.

GG. Fact sheet #33 (Telex No. 002741): Re section 1335 of the Trade Act relating to the list of countries having a memorandum of understanding with DOD. Any such agreement exempts DOD from depositing antidumping and countervailing duties on government importations.

HH. Fact sheet #34 (Telex No. 003123): Re implementation of staged rate reductions for certain products, effective April 1, 1989.

II. Fact sheet #35 (Telex No. 04213): Re Nairobi protocol—preliminary notice and liquidation instructions.

JJ. Fact sheet #36 (Telex No. 00971): Instructions regarding implementation of the Nairobi protocol.

Supplement No. 1: Further instructions and clarification.

For further information, contact the Office of Trade Operations, Entry Programs Branch by calling 566–7723.

VICTOR WEEREN,
Director,
Office of Trade Operations.

(O.C.O.D. 89–3)

This document holds that for purposes of collecting accurate export statistics, the Customs Service is authorized to permit carriers to file a Single Shipper's Export Declaration for multiple rail cars or trucks carrying a single commodity which is cleared simultaneously.

Date: June 27, 1989
File: MAN–06–CO:T:E:T
RMW

TO : All Deputy Assistant Regional Commissioners
FROM : Director
Office of Trade Operations
SUBJECT: Acceptance of a Single Shipper's Export Declaration on Multiple Rail or Truck Shipments

The Bureau of the Census (Census) has requested that U.S. Customs allow carriers to file a single Shipper's Export Declaration (SED) in those instances where multiple rail cars or trucks are used to carry a single commodity which are cleared simultaneously.

At present, Census is receiving one SED for each rail car or truck used to transport a single commodity shipment. Census has indicated, this causes problems because of numerous instances where each copy of the SED will indicate the total quantity of the shipment rather than a prorated quantity for the individual rail car or truck, thus causing an overstatement of the actual quantity exported. Also, these additional copies of the SED are in many cases photocopies, which cause processing problems for Census.

Section 30.6 of the Foreign Trade Statistics Regulations (15 CFR, Part 30) requires a separate SED for each rail car of truck carrying cargo outside the United States. This regulation, however, goes on further to state that Customs Directors are authorized to waive this requirement where multiple car shipments are made under a single bill of lading or, other loading document and are cleared simultaneously. Census has interpreted this waiver authority to include multiple car shipments of a single commodity.

Therefore, in the interest of collecting accurate export statistics, you are authorized to allow carriers to file a single SED for multiple rail cars or trucks carrying a single commodity which are cleared simultaneously.

Please pass this information to all districts directors in your region.

Questions relating to this issue may be directed to the Trade Statistics Branch at FTS 566–6981, 377–9230 or 535–4139.

APPLICATION FOR RECORDATION OF TRADE NAME: "TRIPLE FAT GOOSE"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1224), of the trade name "TRIPLE FAT GOOSE", used by Turbo Sportswear, Inc., a corporation organized under the laws of the State of New Jersey, located at One Walnut Street, Perth Amboy, New Jersey 08862.

The application states that the trade name is used in connection with men's and boy's down filled outwear and active sportswear. The merchandise is manufactured in Korea.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before October 30, 1989.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, N.W. (Room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Velma Taylor, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, N.W. Washington, DC 20229 (202–566–5765).

Dated: August 23, 1989.

MARVIN M. AMERNICK,
Chief,
Value, Special Programs and Admissibility Branch.

[Published in the Federal Register, August 30, 1989 (54 FR 35983)]

U.S. Court of Appeals for the Federal Circuit

ERRATA

UNITED STATES, PLAINTIFF/APPELLANT *v.* TOSHOKU AMERICA, INC. AND FEDERAL INSURANCE CO., DEFENDANTS/CROSS-APPELLANTS, TOSHOKU AMERICA, INC., THIRD-PARTY/PLAINTIFF *v.* CATZ INTERNATIONAL, INC., THIRD-PARTY/DEFENDANT AND FOURTH-PARTY/PLAINTIFF *v.* SOUTHERN COMMODITIES, INC., FOURTH-PARTY/DEFENDANT

Appeal No. 88–1221, 88–1222

(Decided June 30, 1989)

Please make the following corrections to Appeal No. 88–1221 and 88–1222, published in the CUSTOMS BULLETIN, Vol. 23, No. 31, dated August 2, 1989:

Page 7, line 26, change "We reserve." to "We reverse."

Page 8, line 12, change "liquidation" to "liquidated".

Page 8, line 21, change "§ 141.131(g)" to "§ 141.113(g)".

RHONE POULENC, INC., PLAINTIFF-APPELLANT *v.* UNITED STATES, DEFENDANT-APPELLEE

Appeal No. 88–1602

(Decided July 14, 1989)

Please make the following correction to Appeal No. 88–1602, published in the CUSTOMS BULLETIN, Vol. 23, No. 31, dated August 2, 1989:

Page 24, line 2, change "inappropriate basis" to "appropriate basis".

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

James L. Watson
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave

Senior Judges

Morgan Ford

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 89–109)

FLORAL TRADE COUNCIL OF DAVIS, CALIFORNIA, PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND ASOCIACION COLOMBIANA DE EXPORTADORES DE FLORES, DEFENDANT-INTERVENOR

Court No. 88–10–00822

[ITA scope determination affirmed.]

(Decided July 31, 1989)

Stewart & Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr.* and *Jimmie V. Reyna*), for plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch (*Platte B. Moring, III*), Civil Division, United States Department of Justice and *Andrea Fekkes Dynes*, Office of the Chief Counsel for Import Administration, United States Department of Commerce, for defendant.

Arnold & Porter (*Patrick F.J. Macrory* and *C. Anthony Friedrich*) for defendant-intervenors.

OPINION

RESTANI, *Judge:* In this action plaintiff, Floral Trade Council of Davis, California (FTC), challenges the determination of the Department of Commerce, International Trade Administration (ITA) that daisies are not within the scope of antidumping duty orders covering certain flowers from Colombia, Ecuador and Mexico. Public Record Document Number (PR) 37. The administrative proceedings leading to these orders covered seven specific flowers, standard and miniature (spray) carnations, standard and pompon chrysanthemums, alstroemeria, gerberas, and gypsophila. ITA treated all seven investigated flowers as a single class of merchandise. The International Trade Commission (ITC), on the other hand, found that seven different United States industries produced the seven flowers. *See Asociacion Colombiana de Exportadores de Flores* v. *United States*, 12 CIT ——, 693 F. Supp. 1165 (1988) (*Asocolflores I*) and *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 12 CIT ——, 704 F. Supp. 1068 (1988) (*Asocolflores II*). Included among the seven flowers are two daisy-like flowers, gerberas and daisy-type pompon chrysanthemums.[1] *See* 51 Fed. Reg. 21,947,

[1]Apparently, the other major type of pompon chrysanthemum is the cushion type.

21,948, and 21,950 (June 17, 1986) (notices of initiation of investigation). "Daisies" are not a flower species or subspecies. There are, however, several flowers which are commonly referred to as daisies and some of these are found within the chrysanthemum genus. They include marguerite daisies, oxeye daisies and shasta daisies. Gerbera daisies are not within the same genus.

FTC appears to argue that because "chrysanthemums" are discussed in its petition for relief as to the seven flowers, and because the word "daisies" is mentioned there, as well as in some questionnaire responses, that all chrysanthemums, including all daisies which fall within the botanical genus "chrysanthemum," are included within the scope of the resulting orders. ITA states that the petition filed by FTC, and the various notices issued by ITA with regard thereto, specifically mention seven flowers, including two types of chrysanthemums, but do not mention "daisies" as a specifically covered flower. As secondary reasons, ITA states that the physical characteristics of pompon and standard chrysanthemums differ from those of "daisies" and that the expectation of ultimate purchasers differ with regard to "daisies" as opposed to "chrysanthemums."

Apparently, marguerite daisies, and perhaps others, are now of concern to FTC. The petition does not specifically discuss marguerite daisies or any other daisy, apart from the previously mentioned gerbera daisies and daisy pompon chrysanthemums. FTC, however, relies heavily on the listing of various daisies in an appendix to the petition. PR 1, Appendix 2. In the appendix, an excerpt from D. Wyman, *Wyman's Gardening Encyclopedia* (rev. ed. 1977), the daisies are listed as part of the overall description of the genus "chrysanthemum." Because FTC in its petition did not discuss daisies in the same way that it discussed the seven flowers to be investigated, ITC had to determine whether the petition implicitly covered daisies. Despite a few minor ambiguities, the petition does not indicate that an investigation of daisies was requested. Furthermore, apart from some isolated and ambiguous references to daisies in several questionnaire responses, the investigation does not deal with "daisies." The court considers it highly inappropriate of FTC to cite the word "daisies" as it refers to daisy-type pompon chrysanthemums in questionnaire responses as if that is a reference to daisies such as marguerites.

It seems odd to the court that the petition and investigation would speak of pompon chrysanthemums, standard chrysanthemums and gerbera daisies (which are in another genus), if all daisies were intended to be covered as part of the chrysanthemum genus.[2] The simple fact is that FTC did not ask for an investigation of

[2]The court finds *Mitsubishi Elec. Corp.* v. *United States*, 12 CIT ——, 700 F. Supp. 538 (1988) inapposite. *Mitsubishi* dealt with the question of whether certain subassemblies of merchandise were properly included within the scope of an antidumping investigation. In affirming ITA's scope determination, the court emphasized that the petitioner had, in the petition and during the investigation, clearly evinced its intent and purpose to include discrete subassemblies within the scope of the investigation. No such clear expressions of intent and purpose, with

Continued

every flower that is classified in the chrysanthemum genus. Furthermore, it has not even argued that all of the "daisies" that it wishes investigated are covered by the specific terms "standard chrysanthemums" or "pompon chrysanthemums," which were clearly among the flowers to be investigated. ITA's conclusion that "daisies" were not discussed in the petition is essentially correct. "Daisies" were not discussed as a product to be investigated.

FTC also takes issue with ITA's secondary reasoning. In an effort to be comprehensive, ITA attempted to apply the analysis applicable to newly developed products to this case of an existing product. *Diversified Prods. Corp.* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983), sets forth four criteria for determining whether a new product is included within the scope of an existing order: physical characteristics, expectation of the ultimate purchaser, use, and channels of trade. There may be other factors as well. In any case, ITA found differences at least in the first two factors. The record also reveals some specific use differences.

Besides arguing that this analysis is wholly inappropriate,[3] FTC argues that the four factors, particularly the last two, use and channels of trade, reveal substantial similarities. FTC, however, is in somewhat of an awkward position in making these arguments. As indicated, ITC concluded that there were seven different domestic flower industries, largely based on criteria like the four mentioned here. The early litigation revealed that there was little support for the proposition that the United States cut-flower industry as a whole was in an injured state. Thus, without the separate industry findings, ITC apparently would not have found injury, and no antidumping orders would have issued.[4] FTC argued in support of ITC's view that there were significant differences among the flowers. *See supra Asocolflores I.* Thus, the court is not persuaded to any great degree by FTC's new arguments that there are no significant differences among these flowers because general use and channels of trade are similar, as they are for most of the seven flowers. The record indicates that there are significant physical differences and differences in purchaser expectations between flowers which are commercially described as either standard or pompon chrysanthemums on one hand, and flowers which are commercially described as "daisies" on the other hand. Although this secondary reasoning was unnecessary, it is also found to be supported.

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regard to daisies generally, is apparent here from either the petition or the administrative proceedings leading up to the final determinations. Furthermore, the court noted in *Mitsubishi* that any lack of specificity in the petition was understandable given the fact that the petition was drafted in the context of "a quickly developing new industry where precise technical language and available knowledge to describe the industry practices and tactical maneuvering of importing was scant or unavailable." *Mitsubishi*, 700 F. Supp. at 554 (citation omitted). No such constraints on petitioner were present in this case.

[3]This type of analysis may be of use to ITA in making scope determinations regarding pre-existing products, especially if ITA is attempting to interpret an ambiguous petition.

[4]19 U.S.C. § 1673 (1982) requires both a finding of dumping and a finding that a domestic industry is materially injured by reason of dumped imports in order for antidumping duties to be imposed.

Accordingly, after having reviewed the record, including the petition and prior ITC and ITA statements with regard to the covered products, the court finds that ITA's determination that daisies are not included within the scope of its antidumping orders, is substantially supported by the record.

(Slip Op. 89–110)

FORMER WORKERS, UNITED MINE WORKERS LOCAL 7925, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 88–02–00144

[Plaintiffs, current and former employees of a manufacturer of metallurgical and bituminous steam coal, failed to establish that their layoffs were attributable to increased imports of these types of coal, as required to qualify for worker adjustment assistance, where these imports amounted to less than one half of one percent of U.S. productions of such coal. Additionally, steel is not interchangeable with or substitutable for the coal produced by plaintiffs' company; and since their company sold no coal to its parent company, a steel producer, plaintiffs can not prevail in asserting that their layoffs are attributable to the adverse effects on the parent company of steel imports.]

(Dated August 1, 1989)

Creany & Creany (*Timothy Creany*) for the plaintiffs.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, (*Velta A. Melnbrencis*), Civil Division, U.S. Department of Justice, for defendant.

OPINION

MUSGRAVE, *Judge:* In this action, plaintiffs, on behalf of workers and former workers of Beth-Energy Mine No. 78, challenge the decision of the Secretary of Labor denying certification to apply for worker adjustment assistance benefits under the Trade Act of 1974, 19 U.S.C. §§ 2271–2321, 2395 (1982 & Supp. III 1985). The Court has jurisdiction under 28 U.S.C. § 1581(d) (1982).

After consideration of the arguments of the parties and the administrative record, the Court holds that the determination by the Secretary of Labor is supported by substantial evidence and is in accordance with law. This case is dismissed.

BACKGROUND

On November 5, 1987, authorized union representatives of the members of United Mine Workers of America, Local 7925 filed a petition for Trade Adjustment Assistance with the Department of Labor (Labor), pursuant to § 221 of the Trade Act of 1974, 19 U.S.C. § 2271 (1982 and Supp. III 1985), on behalf of workers and former workers of Beth-Energy Mine No. 78. Workers of the same plant had previously filed a Petition for Assistance on September 8, 1986

with respect to which a negative determination was made on December 12, 1986. Administrative reconsideration of that determination was requested; however, a negative determination was made on the application for reconsideration on February 10, 1987.

In the instant case, the petition alleges that approximately 150 workers were scheduled to be separated from employment on October 16, 1987 and that the articles produced by the firm were metallurgical and bituminous steam coal produced at Mine No. 78. Labor initiated Investigation No. TA–W–20,245 on November 16, 1987.

In its investigation, Labor considered statistical data relating to U.S. imports and production of bituminous steam coal, metallurgical coal, and coal generally. (R. 12–17.) The data relating to coal generally showed that both U.S. production and imports increased slightly in 1986 over 1985 but that imports amounted to only 0.27 percent of U.S. production. (R. 12.) The data relating to bituminous steam coal revealed that imports increased in 1986 over 1985, while U.S. production decreased, and that imports amounted to only 0.28 percent of U.S. production. During the period January through June of 1987, both U.S. production and imports decreased as compared to the corresponding period in 1986, with the amount of imports falling to 0.20 percent of U.S. production (R.13.) As regards metallurgical coal, the statistical data showed that U.S. imports were so small as to not even be reported as a percentage of U.S. production, and that U.S. production decreased in 1986 from 1985 and also during the period January through June of 1987 from the corresponding period of 1986. (R.14.)

Due to the negligible amount of U.S. imports of bituminous steam coal and metallurgical coal in 1985 and 1986, Labor did not conduct a customer survey as part of its investigation.

Labor issued a negative determination on December 18, 1987 (52 Fed. Reg. 49,098) regarding the eligibility to apply for worker adjustment assistance of workers and former workers producing metallurgical and bituminous steam coal at Beth-Energy Mine No. 78, on the grounds that increases of imports of articles like or directly competitive with articles produced by such workers' firm did not contribute importantly to their total or partial separation and to the decline in sales or production. *See* 19 U.S.C. § 2272(3).

Plaintiffs requested reconsideration of Labor's determination by letter dated January 11, 1988, on the grounds that Mine No. 78 had been affiliated with Bethlehem Steel Corporation since the opening of the mine, and was thus part of a corporation which plaintiffs asserted had been adversely affected by imports. This request for reconsideration was denied by Labor on January 26, 1988 (53 Fed. Reg. 3274), on the grounds that Labor had determined through its investigation that the coal produced at Mine No. 78 was sold to unaffiliated companies, and that despite its corporate affiliation with Bethlehem Steel, Mine No. 78 had not shipped any of its coal to Bethlehem Steel steel plants since 1982. (R. 26.)

DISCUSSION

In order to certify a group of workers as eligible for trade adjustment assistance, the Secretary of Labor must determine:

> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

19 U.S.C. § 2272.

Based upon the findings of its investigation, Labor determined that the third criterion of the statute was not met. Given the fact that U.S. imports of coal amounted to less than one half of one percent of U.S. production, it seems clear that Labor's determination that these imports did not contribute importantly to plaintiffs' separations is supported by substantial evidence in the record.

Plaintiffs assert that the parent company of Beth-Energy Mines, Bethlehem Steel Corporation, had stopped purchasing coal from Mine No. 78 in 1983, "presumably due to the downturn in the steel production," (Pl. Brief at 4) and that for this reason Beth-Energy had to compete for sales on the open market. Plaintiffs state that "[a]lthough in general the downturn of the steel industry cannot be a predicate for a finding of eligibility by the displaced workers, it set the stage for the effects eventually felt by those workers." (*Id.*) This may well be true; however, it does not change the requirement that the imports considered must be like or directly competitive with the article produced by the petitioners. As stated in *Dan Stipe, et al.* v. *U.S. Department of Labor,* 9 CIT 543, 545, F. Supp. (1985), "[for] an end product to be like or directly competitive with a component part, the imported article 'must be found to be interchangeable with or substitutable for' the article under investigation." (quoting *Holloway* v. *Donovan,* 7 CIT 237, 585 F. Supp. 1427 (1984) (citations omitted)). In *United Mine Workers of America* v. *Brock,* 11 CIT ——, 664 F. Supp. 543, 545–46 (1987), the Court determined that coal is analogous to a component part, while steel is the equivalent of a finished product, and concluded that coal and steel are not substitutes, and do not compete with one another.

The instant case is unlike that presented in *Katunich* v. *Donovan,* 8 CIT 297, 599 F. Supp. 985 (1984), in which the Court affirmed Labor's determination after remand that employees of U.S. Steel's research laboratory were eligible for trade adjustment assistance because they performed services which were integral to the produc-

tion of steel products produced by U.S. Steel. In this case, plaintiffs can not claim that their work is integral to the production of steel at Bethlehem Steel Corporation, given the fact that the coal produced by plaintiffs is not used by Bethlehem Steel, but is sold to unaffiliated companies. Defendant admits that in certain cases Labor has certified workers of a company which produces a "component" product such as coal, when that product is used in the production by an affiliated company of an "end" product such as steel, which is itself adversely affected by imports. As already indicated, however, there is no evidence in the record that the coal produced by plaintiffs was used in the production of an import—affected article by either Beth-Energy or Bethlehem Steel.

Plaintiffs' final argument is that their interpretation of the facts and the statute is arguably consistent with the statutory purpose, and that this entitles them to a reasoned explanation by Labor as to why plaintiffs' interpretation has been rejected. *See International Union, United Auto, Etc.* v. *Marshall,* 584 F.2d 390 (D.C. Cir. 1978). Upon examining the record, however, it is evident that plaintiffs did not put forward an interpretation of the facts and statute that required more of a response from Labor than that which was provided. In their petition, plaintiffs asserted that imports were the cause of their lay-offs and pointed to their corporate affiliation with Bethlehem Steel. In response, Labor noted the negligible quantity of U.S. imports of coal and explained that because Beth-Energy did not actually ship its coal to Bethlehem Steel, this affiliation was not significant.

Plaintiffs suggest that the survey conducted by Labor was lacking in thoroughness, inasmuch as a customer survey was not undertaken. However, "this Court must show substantial deference to the agency's chosen technique, only remanding a case if that technique is so marred that the Secretary's finding is arbitrary or of such a nature that it could not be based on 'substantial evidence'." *United Glass & Ceramic Workers, Etc.* v. *Marshall,* 584 F.2d 398 (D.C. Cir. 1978). Given the evidence in the record, the Court finds that Labor's determination that U.S. imports of coal did not contribute importantly to plaintiffs' separations is reasonable and in accordance with law.

(Slip Op. 89–111)

FORMER EMPLOYEES OF CSX OIL AND GAS CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 87–09–00978

[Judgment for defendant.]

(Decided August 3, 1989)

Mark J. DeLisle, pro se for plaintiffs.

Stuart E. Schiffer Acting Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*M. Martha Ries*) for defendant.

OPINION

CARMAN, *Judge:* Plaintiffs, former employees of CSX Oil & Gas Corporation (CSX) move this Court for judgment upon the agency record. Plaintiffs contend the Department of Labor's (Labor) negative determination of eligibility for certification for trade adjustment assistance benefits and its negative determination for reconsideration[1] are not supported by substantial evidence on the record and are not in accordance with law under the Trade Act of 1974 as amended (the Trade Act). 19 U.S.C. § 2271–98 (1982 & Supp. V 1987).[2]

Plaintiffs request that these determinations be reversed and this Court order Labor to grant their petition for certification for eligibility for trade adjustment assistance. Labor opposes the motion and requests affirmance of its determinations and a judgment of dismissal.

On the basis of the papers submitted herein, the arguments of the parties, the relevant case law and an examination of the administrative record, the Court finds that Labor's determination is based on substantial evidence on the record and is in accordance with law. The determination of Labor is affirmed and the action is dismissed.

BACKGROUND

Plaintiffs are employees of CSX's Western Region, located in the Denver, Colorado District Office. CSX produces crude oil and natural gas products throughout the southwest United States. Plaintiffs, workers in the district office, are employed as geologists (who monitor existing oil and gas reserves and explore for new reserves) and clerical support staff. Plaintiffs were separated from work on February 28, 1987 and filed a petition for adjustment assistance certification with Labor on April 1, 1987. Administrative Record at 2, 33 (hereinafter R.).

[1]The contested determinations are *Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance*, 52 Fed. Reg. 19,783, 19,783–84 (May 27, 1987) (negative determination) and *CSX Oil and Gas Corp.; Negative Determination Regarding Application for Reconsideration*, 52 Fed. Reg. 27,074 (July 17, 1987) (negative determination for reconsideration).

[2]The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, §§ 1421–30, 102 Stat. 1107, 1242–44 (1988) renumbered 19 U.S.C. § 2272 as § 2272(a) and added § 2272(b) relating to the eligibility of oil and gas workers to apply for adjustment assistance benefits. These changes do not effect this determination.

Labor initiated an investigation shortly thereafter which culminated in a negative determination of eligibility for certification for adjustment assistance. In that determination, Labor found that

> Workers at the Denver District Office are engaged in employment supportive of CSX Oil and Gas Corporation's Production of crude oil and natural gas.
>
> Layoffs at the Denver District Office were part of a corporate-wide cost reduction program implemented in April 1986. Employees at the Corporation's Oklahoma City, Oklahoma District Office were also affected by the cost reduction program, and were denied eligibility to apply for adjustment assistance on April 17, 1987 (TA–W–19,136).
>
> Sales of crude oil and natural gas liquids produced by CSX Oil and Gas Corporation increased in quantity in 1986 compared with 1985.
>
> United States imports of dry natural gas decreased absolutely and relative to domestic shipments in 1986 compared with 1985. The ratio of imports to domestic shipments was less than five percent in 1986.

R. 37; 52 Fed. Reg. at 19,783–84. Labor indicated its investigation revealed increased imports did not contribute importantly to worker separations at the firm under 19 U.S.C. § 2272(3). *Id.* The investigation relied upon by Labor in its determination consisted primarily of data gathered in the context of Labor's prior investigation on behalf of former employees of CSX's Oklahoma City, Oklahoma District Office (TA–W–19,136). *See* R. 19–28, 81–83.

By letter dated June 8, 1987, plaintiffs' *pro se* representative wrote Labor requesting reconsideration of the negative determination. R. 43–44. The letter stated:

> We are puzzled by the fact that many local offices of oil and gas exploration companies have been awarded certification of their petition[s]. The Denver exploration office of CSX Oil & Gas does not differ from these other companies. The terminated workers of CSX Oil & Gas Corporation were engaged in exploration and drilling for crude oil, not production of crude oil and natural gas. There is a direct relationship between oil prices and exploration budgets.
>
> While sales of crude oil and natural gas liquids produced by CSX increased in quantity in 1986 compared with 1985, CSX shows a 30% decline in revenues from these sales * * *. This decrease in revenues was due to sharp drops in prices. The price of oil and condensate fell from $32.61 per barrel in 1982 to $13.67 in 1986. This is directly related to the supply and the price of foreign OPEC crude oil.
>
> The layoffs at the Denver office were part of a corporate wide cost reduction program implemented in April, 1986. This cost reduction program, caused by the collapse of oil and gas prices in 1986, was directed at domestic exploration and drilling. * * *

Id. The letter further argued that "the increase of cheap oil imports contributed significantly to the termination of employees within the Denver (and Oklahoma City) exploration offices." *Id.* at 44. In support of this claim, plaintiffs submitted selected portions of CSX's 1986 Annual Report. R. 46–51.

On July 8, 1987, Labor issued its denial of plaintiffs' request for reconsideration. R. 55–58; 52 Fed. Reg. at 27,074–75. The denial of reconsideration stated substantially as follows:

> Petitioner implies that the Department's investigation was off its mark when it investigated the production of crude oil and natural gas at CSX Oil & Gas instead of looking at the relationship between oil prices and exploration budgets. The Department investigated the entire CSX Corporation in order to determine whether the support workers at the Denver District Office could qualify for adjustment assistance. Under certain conditions, service or support workers may become eligible for benefits. In general, the conditions are that the reduction in demand for services must be determined to have originated at a production facility related to the workers' firm by ownership whose workers independently meet the statutory criteria for certification. However, these conditions do not exist for workers of the Denver District Office since there are no CSX Oil & Gas Corporation facilities where workers are certified eligible to apply for adjustment assistance.
>
> CSX is mainly a dry gas and natural gas liquids producer, a minor percentage of its production in 1986 was crude oil. Findings in the investigation show that production workers at CSX did not meet the worker group certification criteria of Section 222 of the Trade Act of 1974. CSX experienced an increase in sales and production of natural gas liquids and crude oil in 1986 compared to 1985. U.S. imports of dry natural gas decreased absolutely and relative to domestic shipments in 1986 compared to 1985.
>
> With respect to petitioner's claim that workers at several Denver offices of other oil and gas exploration companies were certified eligible to apply for adjustment assistance and workers at CSX were not, the Department's records show that workers at other oil and gas exploration companies in the Denver area met the statutory worker group certification criteria of section 222 of the Trade Act.
>
> * * * Worker separations at the Denver District Office were part of a corporate-wide cost reduction program implemented in April of 1986. Also, workers at the Oklahoma City District Office of CSX Oil & Gas were denied eligibility to apply for adjustment assistance on April 17, 1987. * * *
>
> Finally, decreased revenues and declining crude oil prices, in themselves, would not form a basis for certification. Revenues and prices are not criteria for a worker group certification under the Trade Act.

R. 55–58; 52 Fed. Reg. at 27,074–75. Thereafter plaintiffs initiated this action.

CONTENTIONS OF THE PARTIES

In their brief in support of judgment upon the agency record, plaintiffs contest both factual and legal conclusions of Labor.[3] Generally, plaintiffs claim Labor's determination that no increase of imports contributed importantly to the workers' separations is based upon insufficient data. In particular, plaintiffs contest Labor's failure to investigate CSX's Western Region specifically. Plaintiffs contend labor erred by comparing quantity of sales instead of value of sales. Plaintiffs also contest Labor's conclusion that the separations were caused by a corporate-wide cost reduction program, not increased imports. Lastly, plaintiffs claim Labor improperly determined that plaintiffs were support workers not engaged in production of an article for purposes of eligibility certification. Labor counters that its determination is based upon substantial evidence on the record, is in accordance with law and represents a reasonable exercise of its discretion.

STANDARD OF REVIEW

Section 284 of the Trade Act of 1974 empowers the Court of International Trade to review a negative determination by the Secretary of Labor denying certification of eligibility for adjustment assistance. The statute provides in part as follows:

> [t]he findings of fact by the Secretary of Labor * * *, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to [the] Secretary to take further evidence and [the] Secretary may thereupon make new or modified findings of fact * * *. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

19 U.S.C. § 2395(b) (1982). Substantial evidence has been held to be more than a "mere scintilla," but sufficient evidence to reasonably support a conclusion. *Ceramica Regiomontana, S.A.* v. *United States* 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986) (and cases cited therein), *aff'd,* 810 F.2d 1137 (Fed. Cir. 1987). Additionally, the rulings made on the basis of the factual findings must "be in accordance with the statute and not be arbitrary or capricious, and for this purpose the law requires a showing of reasoned analysis." *International Union* v. *Marshall,* 584 F.2d 390, 396 n.26 (D.C. Cir. 1978); *Woodrum* v. *Donovan,* 5 CIT 191, 193, 564 F. Supp. 826, 828 (1983), *aff'd, sub nom. Woodrum* v. *United States,* 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984).

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[3]Plaintiffs' in their Brief refer to the administrative record and "other data" they claim "are very pertinent to this case and are easily verifiable." Plaintiffs' Brief at 1. Labor objects to any references to matters outside the ambit of the administrative record. Defendant's Memorandum In Opposition To Plaintiffs' Motion for Judgment on the Administrative Record at 16 n.7 and 19 n.9 (Defendant's Memorandum). This Court notes that in consideration of this case it has confined its review solely to information contained within the administrative record as required by 19 U.S.C. § 2395(c) (1982).

DISCUSSION

In order to certify a group of workers as eligible for trade adjustment assistance benefits as provided for under section 222 of the Trade Act, the Secretary of Labor must determine:

> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firms or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.
>
> For purposes of paragraph (3), the term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

19 U.S.C. § 2272. Labor concluded that criterion three above had not been satisfied. Labor found that no increases in imports of articles like or directly competitive with articles produced by CSX contributed importantly to plaintiffs' separations.

It is settled law that plaintiffs must meet all three requirements of section 222 of the Trade Act to be entitled to relief. "[F]ailure to satisfy any one of the three criteria of certification of workers for assistance will result in denial of adjustment assistance." *Former Employees of Bass Enterprises Production Co.* v. *United States,* 13 CIT ——, 706 F. Supp. 897, 900 (1989) (hereinafter *Bass*) (*citing Former Employees of Asarco's Amarillo Copper Refinery* v. *United States,* 11 CIT ——, 675 F. Supp. 647, 651 (1987) (hereinafter *Asarco*); *Abbott* v. *Donovan,* 8 CIT 237, 239, 596 F. Supp. 472, 474 (1984)).

Labor's negative determination of eligibility for adjustment assistance was based on its conclusion that there were no increased imports which contributed importantly to plaintiffs' job loss. Labor supported this conclusion with data which showed that CSX's sales of crude oil and natural gas liquids increased absolutely in 1986 compared with 1985. Labor's investigation determined that CSX experienced a slight decline in sales and production of dry natural gas. See Confidential Administrative Record at 26 (hereinafter Conf. R.). Consequently, Labor examined United States imports to determine if dry natural gas imports increased. The record shows that United States imports of dry natural gas decreased absolutely and relative to domestic shipments in 1986 compared with 1985. R. 37. Thus Labor found that there were no increased imports which contributed importantly to the workers' separations. Labor attributed the job loss to a corporate-wide cost reduction program.

The gravamen of plaintiffs' argument is that while CSX's sales in terms of *quantity* increased, its sales in terms of *value* decreased due to a world wide glut of crude oil which caused steep declines in world oil prices. *See* Plaintiffs' Brief at 1; Plaintiffs' Reply Brief at 2 ("Labor's definition of sales and production are obviously different than the plaintiff[s']."). The decrease in the price of crude oil resulted in substantially less revenue for CSX, forcing a cutback in exploration and drilling plaintiffs' job loss. *See* R. 43–44. Thus, plaintiffs argue, increased crude oil imports caused the workers' separations.

While plaintiffs' job loss may well have been "caused," in a purely economic or lay sense, by cheap crude oil imports, the trade adjustment assistance law was not intended by Congress to provide assistance to all workers who lose their jobs due in some measure to imports. *See Asarco,* 11 CIT at ——, 675 F. Supp. at 650 (discussing the legislative history of Trade Act of 1974). "While it is [also] true that the assistance provisions are to be construed liberally * * * the parameters of [the statute] cannot be ignored. The benefits of the Act are not universal and some hardships may result." *Pemberton* v. *Marshall,* 639 F.2d 798, 800 (D.C. Cir. 1981) (citation omitted). This Court understands the unfortunate and difficult predicament plaintiffs' job loss may have imposed upon them, but this Court must implement the statute as intended by Congress.

Labor's reliance on company sales data showing increased production in terms of quantity as opposed to value has been upheld by this Court. In *Asarco* this Court affirmed Labor's finding that sales have not "decreased absolutely" under section 222(2) of the Trade Act when there is an increase in the quantity of articles sold by the firm or subdivision. *Asarco,* 11 CIT at ——, 675 F. Supp. at 650; *see also, Bass,* 13 CIT at ——, 706 F. Supp. at 902 (explaining *Asarco*). Labor argues that this interpretation should apply to section 222(3) of the Trade Act as that section "incorporates the requirement stated in subsection 222(2) that there be an absolute decline in sales or production." Defendant's Memorandum at 22 n.12. This court is in agreement with Labor's argument here, as a plain reading of the statute supports Labor's position.

In evaluating Labor's claim on the merits, this Court "must accord substantial weight to an agency's interpretation [of] a statute it administers," provided it is reasonable. *Kelley* v. *Secretary United States Dep't of Labor,* 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Asarco,* 11 CIT at ——, 675 F. Supp. at 649; *Bass,* 13 CIT at ——, 706 F. Supp. at 902.

In this case, Labor's determination that increased imports did not cause CSX's decline in sales of dry natural gas was reasonable. Labor's investigation determined that CSX produced three products, crude oil, liquid natural gas and dry natural gas. Information submitted by CSX showed that production and sales of crude oil and liquid natural gas increased, hence imports of products like or directly competitive with crude oil and liquid natural gas did not im-

portantly cause the worker separations. Conf. R. 26. Labor further found that while CSX's dry natural gas sales and production decreased slightly in quantity, so too did United States imports. *Id.*; R. 32. Thus, it was reasonable for Labor to conclude that there were no increased imports which contributed importantly to plaintiffs' separations. This conclusion is bolstered by substantial evidence in the record that the cause of the worker layoffs was a corporate-wide cost reduction program. R. 43, 51 and 54.[4]

It was also reasonable for Labor to forego gathering additional information from the Western Region since it had enough data to reasonably determine that the workers' separations did not result from increased imports. It is well established that while Labor has a duty to investigate, "the nature and extent of the investigation are matters resting properly within the sound discretion of the administrative officials." *Cherlin* v. *Donovan,* 7 CIT 158, 162, 585 F. Supp. 644, 647 (1984); *Woodrum* v. *Donovan,* 4 CIT 46, 51, 544 F. Supp. 202, 205 (1982). This Court must give substantial deference to the method chosen by the agency to fulfill its statutory responsibility. *See Kelley,* 812 F.2d at 1380. The rationale underlying this rule has been aptly stated.

> Methodological flexibility is critical if the Secretary [of Labor] is to discharge his official responsibility under the worker adjustment provisions of the Trade Act. Consequently, this court must show substantial deference to the agency's chosen technique, only remanding a case if that technique is so marred that the Secretary's finding is arbitrary or of such a nature that it could not be based on 'substantial evidence.'

United Glass & Ceramic Workers of North America v. *Marshall,* 584 F.2d 398, 404–05 (D.C. Cir. 1978) (footnote omitted); *see also, Abbott* v. *Donovan,* 6 CIT 92, 97, 570 F. Supp. 41, 47 (1983).

This Court is satisfied that it was reasonable for Labor to forego a more particularized investigation of sales and production of CSX's Western Region. Labor already had before it sufficient current and relevant information establishing sales and production levels for CSX which it had obtained in its investigation on behalf of former

[4]It might be argued that *Bass,* decided after briefing in this case, requires Labor to cumulate oil and gas sales and production data on the basis of value. This Court disagrees with this reading of *Bass.*

In *Bass,* this Court found unreasonable Labor's determination that sales or production of the firm or subdivision increased for purposes of section 222(2) when Labor based its conclusion on data showing the increased production of only one of two important articles produced by the firm where the workers produced both articles.

Labor's investigation in *Bass* found that Bass was primarily a crude oil producer with natural gas accounting for an "important" portion of their total production. The crude oil and natural gas were produced simultaneously from the same wells. Data showed that Bass increased sales and production of crude oil over the period examined when measured in quantity. The record also showed that Labor failed to examine data relating to Bass' production of natural gas. From this data showing increased production and sales of crude oil, Labor concluded that it need not conduct a further investigation, since, in its view, the statutory criteria could not be met.

The Court in *Bass* disagreed, finding that Labor's interpretation was unreasonable. The Court stated: "The statute does not permit Labor to deny benefits upon determining that the quantity of sales or production of only one of two important and related products has not decreased absolutely where the petitioning workers are producing both products." 13 CIT ——, 706 F. Supp. at 902. The Court ordered Labor to examine natural gas production and employ a reasonable methodology for comparing production of natural gas (measured in thousand cubic feet) with crude oil (measured in terms of barrels) which the Court could review. The Court noted that "Labor *may* employ a common denominator (e.g. value)," or some other reasonable methodology on remand. *Id.* (emphasis added).

It is clear to this Court that the Court in *Bass* did not read the statute as mandating comparisons on the basis of value, but merely reiterated the long standing rule that the agency employ a reasonable methodology.

employees of CSX's Oklahoma City District Office one month earlier. As shown above, this information was sufficient for Labor to determine that plaintiffs were not eligible for relief under section 222(3) of the Trade Act. Thus, it was entirely reasonable for Labor to end the investigation at that point.

Since this Court has upheld Labor's determination that increased imports did not contribute importantly to the plaintiffs' separations for purposes of 19 U.S.C. § 2272(3) the relief sought by plaintiffs must be denied. Accordingly, the Court need not address plaintiffs' other claims for relief. *See Bass,* 13 CIT at ——, 706 F. Supp. at 900; *Abbott* v. *Donovan,* 8 CIT at 239, 596 F. Supp. at 474.

Conclusion

This Court holds Labor's negative determination of eligibility for trade adjustment assistance and its refusal to reconsider are based upon substantial evidence on the record. Furthermore, the methodology employed by Labor was reasonable and in accordance with the relevant decisional law. Labor's determination is affirmed and this action is dismissed.

(Slip Op. 89–112)

FORMER EMPLOYEES OF MONROE OIL & GAS AND MILAM WELL SERVICE, INC., PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 89–04–00187

Pro se plaintiffs were ineligible for trade adjustment assistance when their petition was filed with the United States Department of Labor more than 90 days after the effective date of the Omnibus Trade and Competitiveness Act.

[Action dismissed.]

(Decided August 7, 1989)

William B. Hancock, pro se, for plaintiffs.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Jane E. Meehan*), for defendant.

DICARLO, *Judge:* Plaintiffs, former employees of Monroe Oil and Milam Well Service, Inc., challenge the determination of the Secretary of Labor that they are ineligible for trade adjustment assistance under 19 U.S.C. § 2272, as amended by section 1421(a) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102, Stat. 1107, 1242–43 (1988) ("Omnibus Trade Act"), because the statutory period for filing plaintiffs' petition expired prior to its receipt by Labor. The government moves to dismiss pursuant to Rule 12(b)(5) of the Rules of this Court for failure to state a claim upon which relief may be granted. The Court finds that Labor prop-

erly denied plaintiffs' untimely petition for trade adjustment assistance, and grants the government's motion to dismiss.

BACKGROUND

Three former employees of Monroe and Milam petitioned Labor for certification of eligibility for trade adjustment assistance on behalf of plaintiffs. Dated February 27, 1989, their application lists the dates of their respective separations as July 11, 1986, April 15, 1986, and September 1, 1988. Labor rejected plaintiffs' petition because it was filed beyond the statutory 90-day limit under section 1421(a)(1)(B) of the Omnibus Trade Act. Plaintiffs commenced this action challenging Labor's decision by an undated letter, deemed by the Clerk of this Court to constitute a summons and complaint filed on April 10, 1989.

DISCUSSION

19 U.S.C. § 2273(b) requires petitions for trade adjustment assistance to be filed within one year of separation from employment. Section 1421(a)(1)(B) of the Omnibus Trade Act amended this rule by providing a one-time opportunity to apply for adjustment assistance, by filing a petition within 90 days after August 23, 1988, the effective date of the Omnibus Trade Act. Only workers separated after September 30, 1985 from a firm engaged in exploration or drilling for oil, who were not eligible for trade adjustment assistance prior to the 1988 amendment are eligible under this new provision. Section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. at 1243 (1988); *Former Employees of NL Idus., Inc.* v. *United States Dept. of Labor,* 13 CIT at ——, Slip Op. 89–88, at 6–7 (June 27, 1989); *Former Employees of Bass Enter. Prod. Co.* v. *United States,* 13 CIT at ——, 706 F. Supp. at 900; *Trade Adjustment Assistance; Oil and Gas Exploration and Drilling Workers; Petitions,* 53 Fed. Reg. 35,390 (Sept. 13, 1988).

According to their petition, the plaintiffs are oilfield workers, separated after September 30, 1985, and who otherwise would be ineligible for trade adjustment assistance. Nevertheless, plaintiffs did not submit their petition to Labor until February 27, 1989, well past the 90-day limit. The Secretary, therefore, properly denied the petition as untimely filed under section 1421(a)(1)(B) of the Omnibus Trade Act.

CONCLUSION

As stated in *Former Employees of NL Indus., Inc.,* v. *United States Dept. of Labor,* 13 CIT ——, 89–88 at 7 (June 27, 1989), the "Court is constrained to give effect to statutory enactments as mandated by Congress even though the results may appear harsh." This Court finds that because the plaintiffs did not file their petition for certification of eligibility for trade adjustment assistance within 90 days after the effective date of the 1988 Omnibus Trade Act, they have

failed to state a claim upon which relief can be granted. The government's motion to dismiss is granted.

(Slip Op. 89–113)

LMI-LA METALLI INDUSTRIALE, S.P.A., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND AMERICAN BRASS, ET AL., DEFENDANT-INTERVENORS

Court No. 87–03–00560

Since the plaintiff conceded after discussion that there is no irreparable injury because it will have other adequate opportunities to move for injunctive relief if necessary, an injunction against liquidation pending appeal is denied for merchandise entered (1) during an annual review period where an administrative review is pending, and (2) for future review periods. The motion for injunction against liquidation pending appeal is denied for entries made during an annual review period where no request for an administrative review was made and where Commerce had issued liquidation instructions to Customs three months earlier.

[Motion for injunction pending appeal denied.]

(Decided August 7, 1989)

Barnes, Richardson & Colburn (*David O. Elliott* and *Josephine Belli*) for plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*M. Martha Ries*); United States Department of Commerce, Office of the Chief Counsel for International Trade (*Robert E. Nielsen*), for defendant.

Collier, Shannon & Scott (*Jeffrey S. Beckington, David A. Hartquist*, and *Carol A. Mitchell*) for defendant-intervenors.

DICARLO, *Judge:* An Italian manufacturer of brass sheet and strip, LMI—La Metalli Industriale, S.p.A (LMI), moves pursuant to Rules 62(a) and 62(c) of the Rules of this Court to enjoin liquidation of "any and all entries" of brass sheet and strip imported from Italy and manufactured by LMI, which are covered by the *Antidumping Duty Order; Brass Sheet and Strip from Italy,* 52 Fed. Reg. 6997 (Mar. 6, 1987), *amended,* 52 Fed. Reg. 11,299 (Apr. 8, 1987). LMI seeks this injunction against liquidation pending appeal of this Court's decision in *LMI—La Metalli Industriale, S.p.A.* v. *United States*, 13 CIT ——, Slip Op. 89–46 (Apr. 11, 1989), which affirmed the antidumping duty order's underlying dumping and material injury determinations by the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

The Court denies the injunction pending appeal for entries made during the first review period because an administrative review is pending and the plaintiff acknowledged that there is no irreparable injury since liquidation of those entries is already administratively suspended and the plaintiff will have adequate opportunity, if necessary, to challenge the administrative review results or otherwise move for injunctive relief when the review is complete. The motion for an injunction pending appeal for entries made during the second

annual review period was withdrawn since Commerce had already issued liquidation instructions to Customs three months earlier. The Court denies the injunction pending appeal for the third administrative review period because the plaintiff again conceded after discussion that there is no irreparable injury since it will have other adequate opportunities, if necessary, to move for injunctive relief at a later date.

BACKGROUND

The antidumping duty order provides that "all unliquidated entries, or warehouse withdrawals, for consumption of brass sheet and strip from Italy made on or after August 22, 1986 * * * will be liable for possible assessment of antidumping duties." 52 Fed. Reg. at 6997–98. August 22, 1986 is the date when Commerce published its preliminary determination of sales at less than fair value.

Antidumping duties are not assessed at the deposit rate established by Commerce in the final determination of sales at less than fair value. That rate reflects the dumping margin for merchandise entered, typically, during a period of at least 150 days prior to the filing of the petition until one month after the filing of the petition. Normally, those entries have already been liquidated without antidumping duties. The dumping margin or rate established in the final determination serves as a basis for the posting of bonds and collection of cash deposits of estimated duties on merchandise which enters after the preliminary affirmative determination and is subject to suspension of liquidation.

Usually, only merchandise entered on or after the date of publication of a preliminary affirmative determination is subject to the assessment of antidumping duties. 19 U.S.C. §§ 1673b(b) and 1673f(a). Actual dumping duties are calculated during an administrative review of a dumping order. An interested party must request an administrative review in the anniversary month of the publication of the antidumping duty order. 19 U.S.C. § 1675(a)(1) (1982 & Supp. V 1987). If no review is requested, a Commerce regulation provides for the unliquidated entries and warehouse withdrawals for consumption to be liquidated at the estimated antidumping duty rate. 19 C.F.R. § 353.53a(d)(1) (1988). *See also* Horlick & DeBusk, *Commerce Procedures Under Existing and Proposed Antidumping/Countervailing Duty Regulations,* 22 Int'l Law. 99, 117–18 (1988). Entries, once liquidated, are no longer subject to the effect of a subsequent judicial decision. *See* 19 U.S.C. § 1516a(c)(1), (e) (1982).

A. *First Administrative Review:*

While the *LMI* litigation was pending, the domestic petitioners asked Commerce to initiate an administrative review of the antidumping duty order, which Commerce commenced for entries made between August 22, 1986 and February 29, 1988. 53 Fed. Reg. 15,083 (Apr. 27, 1988). That review is pending, and entries subject

to this review continue to be suspended until publication of the final results. Absent an injunction, these entries will be liquidated at the rate, if any, determined upon completion of this first administrative review.

B. *Second Administrative Review:*

Commerce published notice of the opportunity to request an administrative review for a second review period, covering entries from March 1, 1988 through February 28, 1989. 54 Fed. Reg. 8372 (Feb. 28, 1989). Neither the domestic industry nor LMI requested an administrative review for this second period, and Commerce issued instructions to the United States Customs Service on May 10, 1989 to liquidate entries for this period at the final amended cash deposit rate established by the antidumping duty order on April 8, 1987. *Defendant's Opposition to Plaintiff's Motion for an Injunction Pending Appeal*, exhibit 1.

C. *Third Administrative Review:*

An announcement to request an administrative review for the third review period covering March 1, 1989 through February 28, 1990 will not be published in the *Federal Register* until February or March of 1990.

DISCUSSION

A. *No Prior Injunction Was Sought:*

Defendant-Intervenors state that the plaintiff's motion should be denied because the rules of this Court do not permit a party to obtain an injunction pending appeal without first seeking an injunction during the lower court proceeding.

Rule 62(c) of the Rules of this Court sets forth the requirements for an injunction pending appeal:

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

The defendant-intervenors argue that this rule requires that a party attempt to obtain an injunction during the lower court proceeding before seeking an injunction pending appeal. They state that LMI's failure to seek an injunction during the lower court proceeding should now bar it from seeking an injunction pending appeal.

LMI's motion for an injunction pending appeal is properly made in the first instance in this Court under Rule 8(a) of the Federal Rules of Appellate Procedure. The Federal Appellate Rule provides in part that:

> Application for a stay of the judgment or order of a district court pending appeal * * * *or* for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court.

The disjunctive language in Rule 8(a) of the Federal Rules of Appellate Procedure does not require a party seeking an injunction pending appeal to have previously sought an injunction during the pendency of the district court litigation. The Court finds that it may exercise its equitable powers to grant an injunction pending appeal even when a party has not previously sought an injunction during the pendency of litigation in the Court of International Trade. This interpretation is supported by Rule 1 of the Rules of the Court of International Trade, which provides that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action."

B. *First Review Period:*

The government argues that the Court may not exercise its equitable powers to grant LMI's motion, which the government interprets as an attempt to "bootstrap" onto a pending action which is properly before the United States Court of Appeals for the Federal Circuit an independent cause of action concerning the liquidation of first review period entries which are subject to a continuing administrative review and future review periods for which the time for requesting administrative reviews has not yet arrived.

There is a split of authority within the Court of International Trade as to whether an administrative review must be requested in order for a party to obtain an injunction against liquidation. Some cases have held that an administrative review must be requested. *Fundicao Tupy S.A.* v. *United States*, 12 CIT ——, 696 F. Supp. 1525 (1988); *Fundicao Tupy S.A* v. *United States*, 11 CIT ——, 669 F. Supp. 437 (1987), *appeal dismissed as moot*, 841 F.2d 1101 (Fed. Cir. 1988). *See also British Steel Corp.* v. *United States*, 10 CIT 661, 647 F. Supp. 928 (1986) (application for preliminary injunction), *appeal dismissed as moot*, No. 87–1050 (Fed. Cir. Mar. 31, 1987). Other cases have held that a party need not request a review in order to obtain an injunction. *Ipsco, Inc.* v. *United States*, 12 CIT ——, 692 F. Supp. 1368 (1988); *Oki Elec. Indus. Co.* v. *United States*, 11 CIT ——, 669 F. Supp. 480 (1987); *British Steel Corp.* v. *United States*, 10 CIT 716, 649 F. Supp. 78 (1986) (injunction pending appeal). *See also Fundicao Tupy S.A.* v. *United States*, 12 CIT ——, 696 F. Supp. 1525, 1530–34 (1988) (DiCarlo, J., dissenting). Yet another case found that a party who did not request an administrative review was not entitled to an injunction against liquidation, but could enjoin Commerce from issuing liquidation instructions to Customs. *Algoma Steel Corp., Ltd.* v. *United States*, 12 CIT ——, 696 F. Supp. 656, 661 (1988). The uncertainty in the law is a cause of great con-

cern to importers and domestic producers who must gamble as to whether to request an administrative review and incur the tremendous expenses of perhaps unnecessary administrative proceedings.

Since an administrative review has been requested for this first review period, the jurisdictional problem of whether to request a review is not present. The jurisdictional issue raised is whether the Court may enjoin liquidation of entries that are subject to a pending administrative review.

Since the Court finds that a denial of an injunction is required on the merits, the Court declines to resolve with haste the questions raised concerning the scope of its jurisdiction and equitable powers. *See Secretary of the Navy* v. *Avrech*, 418 U.S. 676, 677–78 (1974); *Sharp Corp.* v. *United States*, 837 F.2d 1058, 1062 (Fed. Cir. 1988); *Hyundai Pipe Co.* v. *United States International Trade Comm'n*, 10 CIT 695, 698, 650 F. Supp. 174, 176 (1986).

In granting an injunction pending appeal, the court considers: (1) a threat of irreparable harm; (2) a likelihood of success on appeal; (3) whether the injunction will substantially injure other parties in the proceeding; and (4) where the public interest lies. *See Hilton* v. *Braunskill*, 481 U.S. 770 (1987); *Zenith Radio Corp.* v. *United States*, 1 Fed. Cir. (T) 74, 710 F.2d 806 (1983); *S.J. Stile Assocs. Ltd.* v. *Snyder*, 68 CCPA 27, C.A.D. 1261, 646 F.2d 522 (1981).

In this action the plaintiff acknowledged that there is no irreparable harm which will occur in the absence of an injunction pending appeal. Liquidation of the entries is already suspended administratively pending completion of the review. The plaintiff conceded after discussion at oral argument that when the review is finished, it will have other opportunities to challenge the results in a judicial action or in another motion for injunctive relief.

An injunction pending appeal is not a matter of right, even if irreparable injury might otherwise result to the appellant. Rather, it is an exercise of judicial discretion and the propriety of issuing an injunction pending appeal depends on the circumstances of each case. *See Brother Indus. Ltd.* v. *United States*, 3 CIT 242, 243, (1982). Since the plaintiff has admitted that there will be no irreparable injury in the absence of injunctive relief, the motion for an injunction pending appeal is denied as to entries made during the first review period.

C. *Second Review Period:*

When neither the domestic industry nor LMI requested a review for the second administrative review period, Commerce instructed Customs to liquidate entries for this period at the final amended cash deposit rate established by the antidumping duty order.

This situation presents facts similar to those found in *Algoma Steel Corp., Ltd.* v. *United States*, 12 CIT ——, 696 F. Supp. 656 (1988). In *Algoma*, the court held that a party who did not ask for injunctive relief during the pendency of litigation before the Court

of International Trade and who did not ask Commerce to conduct an administrative review was not entitled to an injunction pending appeal where Commerce had already issued liquidation instructions to Customs. The *Algoma* court found that an injunction would "disturb to some degree the status quo as to such entries." *Id.* at ——, 696 F. Supp. at 658.

As to entries made during the second administrative review period, an injunction would disturb the *status quo.* At oral argument held on July 28, 1989, the plaintiff admitted that its request for an injunction as to entries made during the second review period was "probably too late" and withdrew its request for injunctive relief as to these entries.

D. *Third Administrative Review:*

The opportunity to request an administrative review for the third review period covering March 1, 1989 through February 28, 1990 will not arise until February or March of 1990. As with entries made during the first review period, the plaintiff acknowledged after discussion that there will be no irreparable injury if the injunction pending appeal is not granted because the plaintiff will have other opportunities to move for injunctive relief or otherwise avoid liquidation of entries made during this and other future review periods.

CONCLUSION

The plaintiff's motion for an injunction pending appeal is denied.

(Slip Op. 89–114)

UNITED STATES, PLAINTIFF *v.* KINGSHEAD CORP., DEFENDANT

Court No. 82–08–01145

Defendant may not raise the defense that the terms of a prior consent judgment on two entries of merchandise preclude a subsequent action against 71 other entries, when the language of the judgment shows that it would not encompass other entries not subject to the action upon which the consent judgment was based.

[Plaintiff's motion for partial summary judgment granted.]

(Decided August 7, 1989)

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Elizabeth C. Seastrum*); United States Customs Service, Assistant Regional Counsel (*Margaret Solinger*), for plaintiff.

Windels, Marx, Davies & Ives (*Jonathon R. Moore*) for defendant.

DICARLO, *Judge:* The United States moves for partial summary judgment pursuant to Rule 56 of the Rules of this Court in this action under 19 U.S.C. § 1592 to enforce penalties and collect customs duties on 71 entries of scissors imported from Italy. Kingshead

Corp. also moves for summary judgment, claiming that a consent judgment entered on two other entries seized by the United States Customs Service bars the government's right to recover penalties on the 71 entries.

The Court finds no material issues of fact in dispute, and that the government is entitled to judgment as a matter of law. The government's motion for partial summary judgment is granted, and Kingshead's cross motion for summary judgment is denied.

Background

Customs seized one entry of Kingshead's merchandise upon discovery of allegedly false invoices and entry papers. This seizure led to the investigation of 72 other entries, one of which Customs also seized. The government initiated a forfeiture action in the United States District Court for the District of New Jersey against collateral posted by Kingshead for the two seized entries. *United States* v. *$10,500 and a Letter of Credit in the Amount of $15,492,* No. 78–672 (D.N.J. Jan. 25, 1979). That action concluded with the entry of a consent judgment which provided for payment by Kingshead of $12,800.

Pursuant to 19 U.S.C. § 1592, which provides for penalties against importation of merchandise by fraud, gross negligence, and negligence, Customs demanded that Kingshead pay a penalty on the 71 entries that had not been seized. Kingshead argued that the consent judgment released it from any and all liabilities concerning these entries, and thus barred Customs from seeking further penalties. The government instituted this action upon Kingshead's refusal to pay the penalty.

In *United States* v. *Kingshead Corp.,* 11 CIT ——, Slip Op. 87–2 (Jan. 7, 1987), the court denied the parties' cross motions for summary judgment because material issues of fact existed as to the intent of the parties at the time the consent judgment was entered, and as to the meaning of the word "claims" as used in the consent judgment and as understood by the parties. *Id.* at 6.

These motions for summary judgment involve the same issue as the previous motions: whether the terms of the consent judgment release all claims the government may have had against Kingshead as to all 73 entries, or only as to the two entries involved in the forfeiture action.

Discussion

Under Rule 56(d) of the Rules of this Court, summary judgment is appropriate if the court finds that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *United States* v. *Toshoku Am., Inc.,* nos. 88–1221, 88–1222, slip op. at 6 (Fed. Cir. June 30, 1989).

A consent judgment is in the nature of a contract and is to be construed as such, reading all of its provisions as a whole. *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 236–37 (1974); *Hartley* v. *Mentor Corp.*, 869 F.2d 1469, 1472 (Fed. Cir. 1989); *Insurance Concepts, Inc.* v. *Western Life Ins. Co.*, 639 F.2d 1108, 1112 (5th Cir. 1981). Whether the provisions of a contract are clear and unambiguous is a question of law, and, if no ambiguity exists, summary judgment is appropriate. *United States* v. *Contra Costa County Water Dist.*, 678 F.2d 90, 91 (9th Cir. 1982); *Davis* v. *Chevy Chase Fin., Ltd.*, 667 F.2d 160, 169 (D.C. Cir. 1981).

The parties filed affidavits addressing the factual points raised by the court in the prior opinion. Both sides agree that all evidence that would be introduced at trial on this issue is now before the Court. The Court finds that, when read as a whole, the language of the consent judgment is unambiguous, and capable of only one reasonable interpretation.

In the preamble to the consent judgment, the parties state that they "have agreed to settle and compromise the above-entitled action in the sum of $12,000." No reference is made to any action other than the action captioned concerning the $10,500 and a letter of credit in the amount of $15,472, which Kingshead posted for release of the two seized entries.

The judgment then lists the terms for the settlement and compromise of the captioned action. First, Kingshead agrees to pay the United States $12,800 by certified check, in exchange for which the government agrees in paragraph three to return to Kingshead the defendant items, i.e., the cash and letter of credit. The second paragraph contains the disputed language:

> 2. Plaintiff [the United States] agrees to accept the sum of twelve thousand eight hundred dollars ($12,800.00) *in full settlement of any and all claims* which its agencies and their assigns may currently have against Kingshead Corp., its principals and employees including but not limited to defendant items, $10,500.00 and a letter of credit in the amount of $15,472.00, *arising out of the seizures alleged in the Complaint.*

(emphasis added).

Kingshead contends that the language "in full settlement of any and all claims" bars claims that the government may have had as to the 71 entries that were not seized, and that the language in the intervening clause of paragraph 2—"including but not limited to the defendant items"—further supports its reading of the consent judgment as including the 71 other entries.

It is apparent that the language in paragraph two is modified by the final clause in the paragraph, which reads "arising out of the seizures alleged in the Complaint." Thus, this language covers only the two entries involved in the forfeiture action, as those were the only "seizures alleged in the Complaint."

This Court's interpretation of paragraph two is buttressed by language in the fourth and final paragraph:

> 4. Claimant Kingshead Corp. agrees to revise, release, acquit, and forever discharge the United States of America, its agents, and employees of and from all manner of action and actions, suits, debts, sums of money, controversies, damages, claims and demands which it ever had, now has, or which its assigns hereafter may have *by reason of any matter arising out of and from the seizure or storage of items named in the Complaint in the captioned case.*

(emphasis added).

The terms of the consent judgment clearly and unambiguously state that government action is precluded only as to the two entries involved in the forfeiture action, and not against the other 71 entries. When language in a contract is unambiguous, its scope is to be determined within its four corners rather than by reference to extrinsic evidence. *United States* v. *Armour & Co.*, 402 U.S. 673, 682 (1971).

Conclusion

The Court finds that there are no material issues of fact in dispute and that the government is entitled to judgment as a matter of law. The government's motion for partial summary judgment is granted, and Kingshead's cross motion for summary judgment is denied.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	H
				Item No. and rate	Item N
C89/144	DiCarlo, J. July 25, 1989	LKB Instruments	87-2-00282	Item 711.88 Various rates	Item 661 712.49, Variou
C89/145	DiCarlo, J. July 25, 1989	Pharmacia Inc.	81-5-00656	Item 493.6840, 430.00/425.5290 Various rates	Item 661 712.49, 774.55, 711.88, Variou Item 4 Free o
C89/146	DiCarlo, J. July 25, 1989	Pharmacia, Inc.	81-8-01008	Item 711.88, 430.00/425.5290 493.6840 430.00/428.4690 and 429.9590 Various rates	Item 661 712.49, 661.68, 682.60, and 79 Variou
C89/147	DiCarlo, J. July 25, 1989	Pharmacia Inc.	83-7-00977	Item 711.88, 430.2040/ 425/5290, 403.90, 430.2040/ 425.9900, 407.15, 493.68 and 799.00 Various rates	Item 661 712.49, and Va Item 4 Free o
C89/148	DiCarlo, J. July 26, 1989	Imperial Commodities Corp.	87-2-00407	Item 127.10 1.5c per lb.	Item 175 Free o
C89/149	Restani, J. July 27, 1989	Bowe Co.	82-7-01011	Item 355.25 Various rates	Item 359 Variou
C89/150	DiCarlo, J. July 27, 1989	Dominion Ventures, Inc.	83-7-01052	Not stated	Item 274 Variou

N DECISIONS

HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
No. and rate		
31.95, 9, or 657.40 ous rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns
31.95, 9, 682.60, 5, 661.68 8, 799.00 ous rates 437.76 of duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins
31.95, 9, 678.50, 8, 774.55, 0, 660.97, 799.00 ous rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985) and Pharmacia, Abs. P80/100 (1980)	New York Columns; separation media Inc.
31.95, 9, 682.60, Various rates 437.76 of duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins
75.57 of duty	Berns & Koppstein v. U.S., S.O. 89-29 (1989)	New York Nigerseed
59.60 ous rates	Bowe Co. v. U.S., Ct. No. 83-11-01590 (July 13, 1988)	New York Asphalt roofing product, etc.
74.70 ous rates	Dominion Ventures v. U.S., S.O. 86-60 (1986)	New York Stamps for collectors

C89/151	DiCarlo, J. July 27, 1989	Pharmacia Inc.	79-10-01492	Item 711.88, 680.22, 493.6840 Various rates	Item 661.9 712.49, 6 682.60, 7 678.50, 6 686.10 a Various
C89/152	DiCarlo, J. July 27, 1989	Pharmacia Inc.	81-8-01021	Item 711.88, 712.49, 799.00 680.22, 547.55, 661.68, various provisions of schedule 4 Various rates	Item 661.9 712.49, 7 774.55, 6 678.50, 7 and 799. Various Item 43 Free of
C89/153	DiCarlo, J. July 27, 1989	Pharmacia Inc.	81-8-01105	Item 711.88, 493.68, 430.00/425.52, 403.90, 432.00/425.38 Various rates	Item 661.9 712.49, 6 774.55 a 799.00 Various
C89/154	DiCarlo, J. July 27, 1989	Pharmacia Inc.	81-12-01673	Item 711.88, 799.00 680.1740, and various provisions of schedule 4 Various rates	Item 661.9 712.49, 6 774.55 a 799.00 various Item 43 Free of
C89/155	DiCarlo, J. July 27, 1989	Pharmacia, Inc.	83-10-01458	Item 711.88, 712.49, 799.00 various provisions of schedule 4 Various rates	Item 661.9 712.49, 7 774.55, 6 and 799 Various Item 43 Free of
C89/156	DiCarlo, J. July 27, 1989	Pharmacia Inc.	83-11-01605	Item 711.88, 712.49, 799.00, various provisions of schedule 4 Various rates	Item 661.9 712.49, 7 774.55, 6 661.68, 6 and 799 Various Item 43 Free of

95, 661.68, 774.55, 660.97, and 799.00 s rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985) and Pharmacia Inc., Abs. P80/100 (1980)	New York Columns; separation media
95, 713.09, 682.60, 711.88, 9.00 s rates 37.76 duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins; Percoll
95, 661.68, and s rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media
95, 661.68, and rates 37.76 duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins
95, 713.09, 678.50 9.00 s rates 37.76 duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins
95 713.09 660.97 682.60, 9.00 s rates 37.76 duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HI
				Item No. and rate	Item No
C89/157	DiCarlo, J. July 27, 1989	Pharmacia Inc.	85–1–00023	Item 711.88, and various provisions of schedule 4 Various rates	Item 661.9 712.49, 661.68, and 799 Various
C89/158	DiCarlo, J. July 27, 1989	Pharmacia Inc.	85–12–01702	Item 711.88, 712.49, 799.00 various provisions of schedule 4 Various rates	Item 661.9 712.49, 774.55, 661.68, Various Item 43 Free of
C89/159	Restani, J. July 31, 1989	Bowe Co.	86–11–01393	Item 355.25 Various rates	Item 359.6 Various
C89/160	Tsoucalas, J. July 31, 1989	Berkshire Fashions, Inc.	88–2–00082	Item 706.41 20%	Item 386.1 12.5% o of duty
C89/161	Tsoucalas, J. July 31, 1989	Insituform of North America, Inc.	86–2–00260	Item 359.50 Various rates	Item 359.6 Various
C89/162	Newman, S.J. August 1, 1989	C.J. Tower & Sons	88–4–00310	Item 709.27 10.4%	Item 802.3 Free of
C89/163	Newman, S.J. August 1, 1989	Dynamic Classics, Ltd.	88–2–00083	Item 772.30 8.8%	Item A774 Free of
C89/164	Newman, S.J. August 1, 1989	Oryoun Jewelry Imports	88–8–00599	Item 740.13 or 740.14, 7.2%	Item A740 or A740 Free of
C89/165	Newman, S.J. August 1, 1989	Russ Berrie & Co.	88–5–00348	Item 737.47 or 737.30 9.6% or 6.4%	Item 737.4 Free of

SIONS — Continued

HELD lo. and rate	BASIS	PORT OF ENTRY AND MERCHANDISE
.95, , 713.09 , 774.55 9.00 s rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media;
.95 , 713.09, , 682.60, , and 799.00 s rates 37.76 f duty	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media; toxins or antitoxins
.60 s rates	Bowe Co. v. U.S., Ct. No. 83-11-01590	New York Asphalt roofing product, etc.
.13 or free	Agreed statement of facts	New York Folding shopping bags
.60 s rates	Agreed statement of facts	Memphis Needled polyester + P.U. coating
.30 f duty	Agreed statement of facts	Buffalo Medical radioactive scanner
74.55 f duty	Dynamic Classics, Ct. No. 81-7-00938	Newark, N.J. Wearing apparel
40.13 0.14 f duty	Agreed statement of facts	Los Angeles Gold chains or gold bracelets
.47 f duty	Agreed statement of facts	New York #145 Hot Stuff Devil Jr.

C89/166	Newman, S.J. August 2, 1989	Izod	87-2-00246	Item 379.95, 379.96 or 383.90 $0.17 per lb. + 27.5%, $0.12 per lb. + 22.3% and $0.21 per lb. + 27.5%	Item 3 12.1
C89/167	Tsoucalas, J. August 3, 1989	Berkshire Fashions, Inc.	85-6-00854	Item 706.41 20%	Item 3 20% free othe und
C89/168	Tsoucalas, J. August 3, 1989	Berkshire Fashions, Inc.	85-9-01322	Item 706.41 20%	Item 3 20% of d wise the
C89/169	Re, C.J. August 7, 1989	Morse Shoe, Inc.	83-8-01194	Item 700.95 12.5%	Item 7 700. 8.5%
C89/170	Restani, J. August 7, 1989	D & B Roofing Systems	85-2-00285	Item 355.25 Various rates	Item 3 Var
C89/171 [amends C89/153 to correct clerical error]	DiCarlo, J. August 7, 1989	Pharmacia Inc.	81-8-01105	Item 711.88, and various provisions of schedule 4 at various rates	Item 6 712. 774. 799. Var
C89/172	Restani, J. August 9, 1989	D & B Roofing Systems	85-7-00921	Item 355.25 Various rates	Item 3 Var

376.56 .1% or 10.6%	Izod Outerwear v. U.S., 9 CIT 309 (1985)	New York Wearing apparel
386.13 % and e of duty if herwise eligible der the GSP	Agreed statement of facts	Los Angeles Folding shopping bags
386.13 % and free duty if other- se eligible under e GSP	Agreed statement of facts	New York Folding shopping bags
700.35 or 0.45 % or 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87–136 (1988)	New York Footwear
359.60 arious rates	Bowe Co. v. U.S., Ct. No. 83–11–01590 (July 13, 1988)	San Francisco Asphalt roofing product, etc.
661.95, 2.49, 661.68 4.55 and 9.00 arious rates	Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns; separation media
359.60 arious rates	Bowe Co. v. U.S., Ct. No. 83–11–01590 (July 13, 1988)	Houston Asphalt roofing product, etc.

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